

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CITY OF ALBUQUERQUE,

Plaintiff,

v.

MERRICK B. GARLAND, in his official capacity as
Attorney General of the United States, and the **U.S.**
DEPARTMENT OF JUSTICE,

Defendants.

Case No. 1:20-cv-00371-KG-KK

STIPULATION AND JOINT MOTION TO DISMISS

This case involves a Fiscal Year (“FY”) 2018 law-enforcement grant that Defendant Department of Justice (“Department”) conditionally awarded Plaintiff City of Albuquerque (“City”) on October 1, 2018. *See generally* Ex. H to Pl.’s Compl., ECF No. 1-8 (award letter). The City alleges that three of the conditions attached to this grant—specifically, Special Conditions 49, 50, and 51—are invalid. *See generally* Compl., ECF No. 1.

The City, the Department, and U.S. Attorney General Merrick B. Garland (“Attorney General”), sued in his official capacity (collectively, “the Parties”) hereby stipulate as follows:

1. The Department has complied with this Court’s preliminary injunction, ECF No. 42, by releasing the City’s FY 2018 Crime Gun Intelligence Center (“CGIC”) grant funds and extending the City’s CGIC project period until September 20, 2024.

2. On April 22, 2021, the Department’s grant-making components issued revised guidance regarding conditions on certain Department grants. Consistent with Executive Order 13993 (Jan. 20, 2021); an April 14, 2021 memorandum from the Attorney General, *see* Memorandum

Rescission of Attorney General Memorandum Implementing Executive Order 13768, <https://www.justice.gov/ag/page/file/1389046/download>; and relevant grant-making statutes, the Department announced that it “will no longer implement or enforce certain requirements placed on awards that were previously made or offered.” *See* Office of Justice Programs, Legal Notices, <https://www.ojp.gov/microsite-subpage/legal-notices#vnnv0b> (last visited May 11, 2021).

3. Among the conditions that will no longer be enforced on any FY 2018 awards are (a) “Certificate of Compliance with 8 U.S.C. 1373 and 1644”; (b) “Authority to obligate award funds contingent on noninterference . . . with federal law enforcement”; and (c) “No public disclosure of certain law enforcement sensitive information.” *Id.*

4. Thus, the Department has determined that it will no longer implement or enforce the three conditions at issue in this case—*i.e.*, Special Conditions 49, 50, and 51—on the City’s FY 2018 CGIC grant.¹

5. The Department stipulates that it will not attempt to implement or enforce Special Conditions 49, 50, and 51 on the City’s FY 2018 CGIC grant; to withhold, terminate, or claw back the City’s FY 2018 CGIC grant funds based on the City’s rejection of Special Conditions 49, 50, and 51; or to enforce 8 U.S.C. §§ 1373 and 1644 against the City as conditions of the City’s FY 2018 CGIC grant.

In light of the foregoing, the Parties agree that the case is now moot. Accordingly, the Parties jointly move for the case to be dismissed with prejudice and the Court’s preliminary

¹ Defendants maintain that they have legal authority to impose any condition related to law enforcement, including the three conditions challenged here, on discretionary grants made under 34 U.S.C. § 10157(b). *See* Def.’s Opp. to Pl.’s Mot. for Prelim. Inj., ECF No. 25. But in light of the changed circumstances described above, this case no longer presents a vehicle through which that issue may be litigated.

injunction of January 28, 2021 to be dissolved.² The City reserves the right to file a petition for attorney's fees after resolution of the Parties' joint motion.

A proposed order is attached to this stipulation and joint motion.

Dated: May 17, 2021

//s// Alice T. Lorenz

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² See *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1093 (9th Cir. 2010) (“A preliminary injunction imposed according to the procedures outlined in Federal Rule of Civil Procedure 65 dissolves *ipso facto* when a final judgment is entered in the cause.”); *Madison Square Garden Boxing, Inc. v. Shavers*, 562 F.2d 141, 144 (2d Cir. 1977) (“With the entry of the final judgment, the life of the preliminary injunction came to an end, and it no longer had a binding effect on any one. The preliminary injunction was by its very nature interlocutory, tentative and impermanent.”); see also, e.g., *Baker v. Bray*, 701 F.2d 119, 122 (10th Cir. 1983) (vacating a preliminary injunction due to district court’s dismissal of “the claim upon which the request for a preliminary injunction was based”); *Am. Freedom Def. Initiative v. Metro. Transp. Auth.*, 109 F. Supp. 3d 626, 628 (S.D.N.Y. 2015) (dissolving preliminary injunction where the government defendants’ change in policy mooted the case before a decision on the merits), *aff’d*, 815 F.3d 105, 111 (2d Cir. 2016); *Victory v. Berks Cty.*, No. CV 18-5170, 2019 WL 653788, at *6 (E.D. Pa. Feb. 15, 2019) (dissolving preliminary injunction where case became moot before adjudication of the merits); *Great Lakes Consortium v. Michigan*, 480 F. Supp. 2d 977, 986 & n.4 (W.D. Mich. 2007) (similar).

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2021, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will notify all counsel of record of such filing.

/s/ Joseph J. DeMott

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